

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 TYRONE NOEL NUNN,

4 Plaintiff,

5 v.

6 ELY STATE PRISON, et al.,

7 Defendants.

Case No.: 3:23-cv-00540-MMD-CSD

8 **ORDER**

9 (ECF Nos. 4, 5, 6)

10 This is one of numerous civil-rights actions under 42 U.S.C. § 1983 that *pro se*
11 Plaintiff Tyrone Noel Nunn, an inmate in the custody of the Nevada Department of
12 Corrections, has filed since September 2023. On November 8, 2023, this Court ordered
13 Plaintiff to submit a complaint and either pay the full \$402 filing fee for a civil action or file
14 a complete application to proceed *in forma pauperis* ("IFP") on or before January 5, 2024.
15 (ECF No. 3). Before that deadline expired, Plaintiff filed a document titled "Initiation of
16 Actions"¹ that is a collection of handwritten statutes, a vague "affidavit" about exhaustion
17 of administrative remedies, multiple *ex parte* requests for the appointment of counsel,
18 prison classification papers, documents from one of Plaintiff's state criminal cases, an
19 incomplete IFP application, and a proposed summons. (ECF Nos. 4, 5). Plaintiff
20 subsequently filed a document which appears to be a motion to consolidate several cases
21 and includes several more requests for appointment of counsel and affidavits. (ECF No.
22 6).

23 For the reasons discussed below, the Court denies Plaintiff's requests for
24 appointment of counsel and grants him a final extension of time to file a single, complete
25 complaint and either pay the full \$402 filing fee or file a completed financial certificate on
26 this Court's approved form.

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28 ¹ The Clerk's Office identified this document as a "motion for appointment of
counsel" (ECF No. 4) on the docket sheet.

1 **I. DISCUSSION**

2 **A. Plaintiff must file a single, complete complaint.**

3 “*A civil action is commenced by filing a complaint with the court.*” Fed. R. Civ. P.
 4 3. Generally, a complaint must contain “a short and plain statement of the claim showing
 5 that the [plaintiff] is entitled to relief” and “a demand for the relief sought, which may
 6 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8. “*A civil-rights*
 7 *complaint filed by a person who is not represented by an attorney must be submitted on*
 8 *the form provided by this court or must be legible and contain substantially all the*
 9 *information called for by the court’s form.*” Nev. Loc. R. LSR 2-1. And the complaint must
 10 be signed personally by the unrepresented party. Fed. R. Civ. P. 11(a). Furthermore, a
 11 party must state its claims or defenses in numbered paragraphs, each limited as far as
 12 practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). “[E]ach claim founded
 13 on a separate transaction or occurrence . . . must be stated in a separate count.” *Id.*

14 Furthermore, “[p]laintiffs generally have ‘no right to maintain two separate actions
 15 involving the same subject matter at the same time in the same court and against the
 16 same defendant.’” *Adams v. Cal. Dept. of Health Servs.*, 487 F.3d 684, 688 (9th Cir.
 17 2007), overruled on other grounds by *Taylor v. Sturgell*, 553 U.S. 880 (2008), (quoting
 18 *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977)). And duplicative litigation by a
 19 litigant who is proceeding under IFP status can be dismissed as malicious and thus
 20 constitute a strike under the Prison Litigation Reform Act, 28 U.S.C. § 1915. See *Cato v.*
 21 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995).

22 It is not clear whether any of the documents that Plaintiff filed are intended to
 23 constitute a complaint. Plaintiff’s filings include at least 11 different documents with titles
 24 indicating that they are some combination of a motion for appointment of counsel, an
 25 affidavit, and a civil rights complaint. (See ECF No. 4 at 11, 21; ECF No. 6 at 4, 9, 12,
 26 22, 25, 27, 37, 40, 45). These documents include different claims and different
 27 defendants. (*Id.*). Some of them are duplicates from other cases (ECF No. 6 at 45-48),
 28 and all of them have been simultaneously filed in multiple other cases. (See ECF No. 4

1 at 2; ECF No. 6 at 3).

2 Plaintiff gives no indication as to which, if any, of these documents represent the
3 complaint or the claims that he wishes to pursue in this case, as opposed to a complaint
4 or claims for one of his other cases. Furthermore, none of the documents comply with
5 Federal Rules of Civil Procedure 8 and 10. Accordingly, the Court does not accept any
6 of the filed documents as an operative complaint in this case.

7 The Court gives Plaintiff a final extension of time to file a single complaint that
8 complies with these rules and indicates the claims and defendants that Plaintiff is
9 pursuing in this case. The Court reiterates for Plaintiff's benefit that he may not bring
10 multiple different complaints in a single case. Nor may he bring the same complaint in
11 multiple different cases. Rather, Plaintiff must bring a single, unique complaint in each of
12 his cases.

13 **B. Plaintiff must either pay the \$402 filing fee or file a financial certificate.**

14 The United States District Court for the District of Nevada must collect filing fees
15 from parties initiating civil actions. 28 U.S.C. § 1914(a). The fee for filing a civil-rights
16 action is \$402, which includes the \$350 filing fee and the \$52 administrative fee. See *id.*
17 at § 1914(b). "Any person who is unable to prepay the fees in a civil case may apply to
18 the court for leave to proceed in forma pauperis." Nev. Loc. R. LSR 1-1. For an inmate
19 to apply for *in forma pauperis* status, the inmate must submit **all three** of the following
20 documents to the Court: (1) a completed **Application to Proceed in Forma Pauperis**
21 **for Inmate**, which is pages 1–3 of the Court's approved form, that is properly signed by
22 the inmate twice on page 3; (2) a completed **Financial Certificate**, which is page 4 of the
23 Court's approved form, that is properly signed by both the inmate and a prison or jail
24 official; and (3) a copy of the **inmate's prison or jail trust fund account statement for**
25 **the previous six-month period**. See 28 U.S.C. § 1915(a)(1)–(2); Nev. Loc. R. LSR 1-
26 2. In forma pauperis status does not relieve an inmate of his or her obligation to pay the
27 filing fee, it just means that the inmate can pay the fee in installments. See 28 U.S.C. §
28 1915(b).

1 Plaintiff's IFP application is incomplete because he did not submit a financial
 2 certificate on this Court's approved form. (See ECF No. 5 at 4). Rather, Plaintiff
 3 submitted a financial certificate that purports to be for state court. (*Id.*) The Court grants
 4 Plaintiff a final extension of time to either pay the full \$402 filing fee or file a completed
 5 financial certificate on this Court's approved form.

6 **C. The requests for appointment of counsel are denied without prejudice.**

7 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. §
 8 1983 civil-rights actions. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).
 9 Under 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any
 10 person unable to afford counsel.” However, the court will appoint counsel for indigent
 11 civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970
 12 (9th Cir. 2009). “When determining whether exceptional circumstances exist, a court
 13 must consider the likelihood of success on the merits as well as the ability of the petitioner
 14 to articulate his claims pro se in light of the complexity of the legal issues involved.” *Id.*
 15 (quotation omitted). “Neither of these considerations is dispositive and instead must be
 16 viewed together.” *Id.*

17 Plaintiff’s filings include multiple requests for appointment of counsel for a variety
 18 of different claims. (ECF No. 4 at 11, 21, 32; ECF No. 6 at 9, 12, 22, 25, 27, 31, 35, 37,
 19 40, 49). The Court finds that exceptional circumstances warranting the appointment of
 20 counsel do not currently exist. Plaintiff has neither settled the matter of the filing fee nor
 21 filed a complaint that clearly indicates the claims that Plaintiff is pursuing in this case. The
 22 requests for appointment of counsel are therefore denied without prejudice.

23 **D. The motion for consolidation is denied without prejudice.**

24 Plaintiff filed a motion requesting that this case be consolidated with seven other
 25 cases and proceed before a three-judge panel. (ECF No. 6 at 3). Federal Rule of Civil
 26 Procedure 42(a) provides that a court may consolidate the actions if the actions “involve
 27 a common question of law or fact.” Fed. R. Civ. P. 42(a)(2). Plaintiff has not yet filed a
 28 single, complete complaint that indicates the claims that Plaintiff is pursuing in this case.

1 As such, the Court cannot determine whether this case has any questions in common
2 with Plaintiff's other cases, and the Court denies the motion without prejudice.

3 **II. CONCLUSION**

4 For the foregoing reasons, it is ordered that Plaintiff's requests for appointment of
5 counsel (ECF No. 4, 6) are denied without prejudice.

6 It is further ordered that Plaintiff's incomplete application to proceed *in forma*
7 *pauperis* (ECF No. 5) is denied without prejudice.

8 It is further ordered that Plaintiff's motion to consolidate cases (ECF No. 6) is
9 denied without prejudice.

10 It is further ordered that, **on or before March 15, 2024**, Plaintiff will either pay the
11 full \$402 filing fee or file a complete application to proceed *in forma pauperis* on this
12 Court's approved form.

13 It is further ordered that, **on or before March 15, 2024**, Plaintiff will submit a single,
14 complete complaint, indicating the claims and defendants that Plaintiff is pursuing in this
15 specific action to this Court.

16 Plaintiff is cautioned that this action will be subject to dismissal without prejudice if
17 he fails to timely comply with this order. A dismissal without prejudice allows Plaintiff to
18 refile the case with the Court, under a new case number, when he can file a complaint
19 and either pay the required filing fee or file a complete application to proceed *in forma*
20 *pauperis*.

21 It is further ordered that the Clerk of the Court will send Plaintiff Tyrone Noel Nunn
22 the approved form for filing a 42 U.S.C. § 1983 complaint and instructions for the same
23 and the approved form application to proceed *in forma pauperis* for an inmate and
24 instructions for the same.

25 DATED: February 20, 2024.
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UNITED STATES MAGISTRATE JUDGE